

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**CHARLES M. MERKEL, Individually and
as Assignee of Union Planters Bank,**

PLAINTIFF

V.

NO. 2:03CV190-M-D

EMAP PETERSEN, ET AL,

DEFENDANTS

ORDER

In an order dated August 18, 2005, this Court granted the defendants' motion to continue in the above-styled case. The Court also reserved ruling on the additional relief requested by the defendants which consisted of leave to amend their Answer to add a Counterclaim, the existence of which was not, and could not reasonably have been, known to Defendants or to their present or former counsel before the amendment deadline established in the Case Management Plan Order.

Pursuant to Rule 16(b), a party may assert a counterclaim after the scheduling order where it demonstrates "good cause." Fed. R. Civ. P. 16(b). The Fifth Circuit directs courts to consider four factors in determining whether good cause exists: (1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) the potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice. Southwestern Bell Telephone Co. v. City of El Paso, 346 F.3d 541, 546 (5th Cir. 2003). The Court is persuaded that these factors overall favor the defendants. ACCORDINGLY, the Court finds that the motion to amend the Answer to add the proposed Counterclaim is well-taken and should be GRANTED.

This is the 2nd day of December, 2005.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE